



Habeas Corpus and Extraordinary Writs

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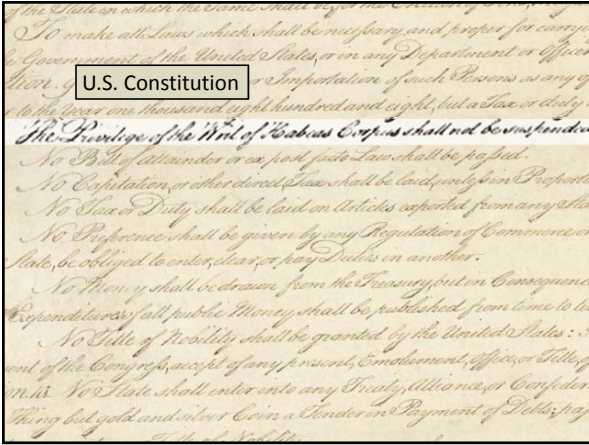
Overview

- Habeas Corpus
- Mandamus
- Prohibition



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U.S. Constitution

N.C. Constitution

Sec. 21. Inquiry into restraints on liberty.
 Every person restrained of his liberty is entitled to a remedy to inquire into the lawfulness thereof, and to remove the restraint if unlawful, and that remedy shall not be denied or delayed. The privilege of the writ of habeas corpus shall not be suspended.

Chapter 17.
Habeas Corpus.
 Article 1.
 Constitutional Provisions.

§ 17-1. **Remedy without delay for restraint of liberty.**
 Every person restrained of his liberty is entitled to a remedy to inquire into the lawfulness thereof, and to remove the same, if unlawful; and such remedy ought not to be denied or delayed. (Const., art. 1, s. 18; Rev., s. 1819; C.S., s. 2203.)

§ 17-2. **Habeas corpus not to be suspended.**
 The privileges of the writ of habeas corpus shall not be suspended. (Const., art. 1, s. 21; Rev., s. 1820; C.S., s. 2204.)

Article 2.
 Application.

§ 17-3. **Who may prosecute writ.**

Habeas Corpus

- For challenging the lawfulness of confinement
- Not a general substitute for appeal

Habeas Corpus

- Application may be made by the inmate or by any person on his or her behalf
- The writ may issue on the court's own motion

Habeas Corpus

- Process:
 - Applicant files application
 - Judge assesses the application
 - Proper form
 - Valid basis for relief
 - If proper form and valid basis, the writ issues, return is made, and hearing is held
 - Judgment entered

Habeas Corpus

- Application may be made to any superior court judge or judge of the appellate division
 - A judge can order the case returned to another judge
 - Rule 25 of the General Rules of Practice applies in capital cases

Habeas Corpus

- The writ must be denied when:
 - The person is committed by virtue of federal process
 - The person is committed or detained by virtue of a final order, judgment, or decree of a competent civil or criminal tribunal
 - No probable ground for relief is shown

Habeas Corpus

- The writ must issue when:
 - No cause is shown for imprisonment
 - The original imprisonment was lawful, yet some subsequent event has entitled the person to release
 - The process is defective in substance and void
 - The process is proper in form but not allowed in this case
 - The person is in the custody of a person not empowered to detain him or her
 - The process is not authorized by any judgment, order, or law

Habeas Corpus

- There is no statutory right of appeal of a grant or denial of the writ of habeas corpus
- Challenged through writ of certiorari

Sample Cases

- Parole decisions
 - Administrative remedies must be exhausted
- Sentence credits
 - Deference to administrative interpretation absent clear constitutional violation
- Immigration
 - No subject matter jurisdiction over exclusively federal issue

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Extraordinary Writs

- The Court of Appeals has jurisdiction, exercisable by one judge or by such number of judges as the Supreme Court may by rule provide, to issue the prerogative writs, including **mandamus**, **prohibition**, **certiorari**, and **supersedeas**, in aid of its own jurisdiction, or to supervise and control the proceedings of any of the trial courts of the General Court of Justice, and of the Utilities Commission and the Industrial Commission.

G.S. 7A-32(c)

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Mandamus

- An order commanding the performance of a specified official duty
- Not a substitute for appeal

Mandamus

- Required elements (In re T.H.T.)
 - Petitioner must demonstrate a clear legal right to the requested act
 - Respondent must have clear duty to perform
 - Act must be ministerial, and not discretionary
 - The time for performing the act has expired
 - There is no alternative, adequate remedy

Mandamus

- Examples
 - Mandamus proper to compel trial judge to enter a required written order

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Prohibition

- An order from a higher court to a lower court preventing the lower court from taking actions not within its legitimate powers
- The “converse of mandamus”

Prohibition

- Petitioner generally required to establish:
 - That the respondent is about to exercise some power
 - That power is unauthorized
 - Exercise of that power will result in injury for which there is no other adequate remedy

Prohibition

- “Failure to follow recognized practice and procedure”
- Superior court purporting to hear an election matter when the remedy, if any, was to appeal to the State Board of Elections
 - Payne v. Ramsey, 262 N.C. 757 (1964)

Procedure

- Both mandamus and prohibition governed by Rule 22 of the Rules of Appellate Procedure
 - Statement of facts and issues
 - Supporting documentation
 - Copies from the record
 - Response within 10 days
 - No briefs or oral argument unless ordered

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Certiorari in the Trial Division

- As provided in Rule 19 of the General Rules of Practice
 - Superior has authority analogous to an appellate court



Questions?